

**FILED**

JUN 02 2011

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**UNITED STATES OF AMERICA,**

Plaintiff - Appellee,

v.

**JERRY ARBERT POOL,**

Defendant - Appellant.

No. 09-10303

D.C. No. 2:09-cr-00015-EJG-1

**ORDER**

**KOZINSKI**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.